



OFICINA DEL PRESIDENTE

ESTADO LIBRE ASOCIADO DE PUERTO RICO  
JUNTA REGLAMENTADORA DE TELECOMUNICACIONES DE PUERTO RICO

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June 4<sup>th</sup>, 2008

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

Re: **In the Matter of Puerto Rico Cable Acquisition Corp. Request for Waiver of 47  
C.F.R. § 76.1204(a)(1), CS Docket No. 97-80, CSR-7201-Z**

Dear Chairman Martin:

The Puerto Rico Telecommunications Regulatory Board ("Board") urges the Commission to grant the requested waiver from the integration ban sought by Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable TV ("Choice"), the smallest of the three cable operators in Puerto Rico. The integration ban delivers no benefit to consumers in southwestern Puerto Rico, but instead has resulted in the shutdown of Choice's HD service to new customers.

The Commission's prior orders have not addressed the unique costs that the integration ban would impose on consumers in Puerto Rico.<sup>1</sup> For the Board, the protection of these consumers is its full time job. The Legislature of Puerto Rico delegated on the Board the authority to regulate the telecommunications industry and the provision of cable television franchising in Puerto Rico, provided that all its actions, regulations and determinations be guided by the Federal Communications Act, the public interest, and especially, by the protection of consumer rights.<sup>2</sup> Accordingly, the Board would welcome efforts by the Commission to promote retail availability of navigation devices in Puerto Rico. But whatever benefit the integration ban may now be having on the mainland, it does not seem to be the right answer in southwestern Puerto Rico at this time.

The retail CableCARD devices that the integration ban is designed to support are not sold in Choice's service area, and TiVo does not support its service or ship its products there. The reason that consumer electronics manufacturers have not shipped CableCARD HDTVs to southwestern Puerto Rico is that they are out of the price range of nearly all of the region's consumers. While the price of HDTVs in Puerto Rico has fallen below \$250, the price of

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<sup>1</sup> Indeed, the Commission's own regulations reveal that the Puerto Rican market was not considered to be a relevant part of the Commission's analysis in its prior orders. Section 76.1204 (a)(2) of the Commission's rules exempt from the integration ban (in Puerto Rico and otherwise) any MVPD that supports the active use by subscribers of navigation devices that "operate throughout the *continental United States*...." (Emphasis added) 47 C.F.R. § 76.1204 (a)(2).

<sup>2</sup> See Act No. 213 of September 12, 1996, as amended, 27 L.P.R.A. § 267f (f).

The Honorable Kevin J. Martin  
 Chairman  
 Federal Communications Commission

CableCARD HDTVs in the mainland generally remains \$1500-6000+. These ultra-expensive TVs are not likely to succeed commercially in southwestern Puerto Rico, where 90% of households have an annual income of less than the median household in the mainland United States. Because there is comparably little demand for retail CableCARD devices in Puerto Rico, application of the integration ban is a solution for a problem that does not clearly exist in Puerto Rico. In any case, it seems a solution far worse than any problem caused by lack of retail availability, because the ban has effectively shut down HD service in rural Puerto Rico.

The Commission is responsible of evaluating the Puerto Rican market independently.<sup>3</sup> In fact, the Commission has frequently granted waivers and other forms of individualized treatment to telephone companies and cable operators in Puerto Rico and other insular areas in light of exceptional circumstances, such as “weak economic conditions” and the low penetration of MVPD services.<sup>4</sup> The same consideration should be afforded in this case.

The DTV transition is now less than nine months away. Nowhere in America is the transition more daunting than in Puerto Rico, where more than half of all households rely on broadcast television. While cable and satellite operators cannot on their own lead Puerto Rico through this transition, the Board and the government and people of Puerto Rico are eager for them to help as much as possible. This is why Luis Fortuño, the Member of Congress from Puerto Rico, wrote to you last year that it would be “unconscionable and contrary to Congressional intent for the Commission to shut down Choice’s HDTV transition and leave any consumers unable to purchase HD services during this critical period before analog broadcasting is terminated in February 2009.” But this is now what has happened. Choice ran out of HD set-top boxes two months ago and is now effectively unable to offer HD service to additional customers, and has stopped adding HD channels. Choice has assured us that it would resume HD service to new customers and double its HD programming if the requested waiver is granted.

The Board understands that some proponents of the integration ban contend that the integration ban will help to create both a supply of and demand for competitive, low-cost navigation devices that could benefit lower-income consumers. But that experiment can and

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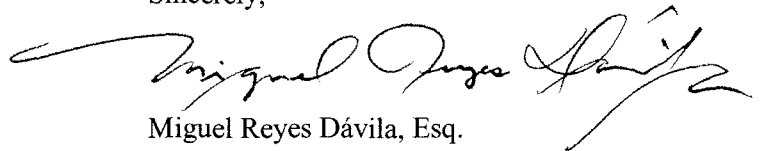
<sup>3</sup> **WAIT Radio v. FCC**, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“The Commission is charged with administration in the ‘public interest.’ That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the ‘public interest’ for a broad range of situations, does not relieve it of an obligation to seek out the ‘public interest’ in particular, individualized cases.”).

<sup>4</sup> See, e.g., **Applications for Transfer of Control WAPA-TV, San Juan, PR**, ID No. 52073, Letter Order, DA 07-500 (rel. Feb. 2, 2007) (granting exception from 47 C.F.R. § 73.3555 (b) for television stations in Puerto Rico, noting “weak economic conditions” (“The gross national income per capita is only 30% of the U.S.’ average and the average wage earned by island residents is only 54% of that earned by mainland residents. Outside of San Juan, the income differential is even more dramatic”) and low MVPD penetration (“cable subscription on Puerto Rico is limited to approximately 25% of TV households and only 20% of TV households subscribe to DBS. This is substantially below the subscription rate of over 80% for multi-channel video providers in the United States.”)).

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission

should first be played out in the mainland United States, where consumers are better able to afford the costs of the ban. If application of the integration ban in the mainland eventually proves to have stimulated the development and adoption of retail navigation devices, and if consumer electronics companies begin to sell more CableCARD-ready devices that are suitable for and available in the Puerto Rican market, and if Choice fails to provide adequate support for such devices, the Commission could revisit whether to apply the rule to Choice. In the meantime, grant of the requested waiver would not undermine the potential success of the integration ban in the mainland any more so than will its non-application in other parts of the Caribbean. By contrast, denial or failure to promptly grant the requested waiver would unnecessarily deny HD service to thousands of Puerto Ricans without providing any local benefit in return. As the guardian of the interests of Puerto Rican consumers, the Board therefore urges the Commission to grant Choice's requested waiver.

Sincerely,

A handwritten signature in black ink, appearing to read "Miguel Reyes Dávila". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miguel Reyes Dávila, Esq.

c: Vicente Aguirre Iturrino, Esq. - Commissioner – (Board)  
Nixyvette Santini Hernandez, PE - Commissioner – (Board)